## Off Case

### T--Wage

A. A “wage” is given to an employee

**Ohio Code 7** writes[[1]](#footnote-1)

4111.01 Minimum fair wage standards definitions. As used in this chapter: (A) **"Wage" means compensation due to an employee by reason of employment**, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the deductions, charges, or allowances permitted by rules of the director of commerce under section 4111.05 of the Revised Code. "Wage" includes an employee's commissions of which the employee's employer keeps a record, but does not include gratuities, except as provided by rules issued under section 4111.05 of the Revised Code.

B.Student athletes don’t receive a wage, so they aren’t employees

**Litchfield 13** writes[[2]](#footnote-2)

Classifying student athletes as employees will significantly expand tort liability for universities Currently, universities have escaped liability for many of their student athletes’ missteps. Because **student athletes are not employees of the university**, the universities are not liable under the theory of respondeat superior. Kavanagh v. Trustees of Boston University, 795 N.E.2d 1170 (Mass.2003) supports this proposition. A Boston University player punched Kavanagh, an opposing basketball player, in the face and broke his nose during a game. Kavanagh sued on the theory that the Boston student athlete, a senior on scholarship, was an agent of the university. The Supreme Judicial Court of Massachusetts firmly rejected Kavanagh’s logic. **The student is a buyer of education** rather than an agent.... [A] student retains the benefit of that education for himself rather than for the university.” Hanson v. Kynast, 24 Ohio St.3d 171, 174, 494 N.E.2d 1091 (1986) (member of university lacrosse team not “agent” of university). **While schools may benefit** in various ways **from the presence of a particular student**, or may benefit in the future from a former student's later success, **the student does not attend school to do the school's bidding**. Kavanagh has cited no authority for the proposition that the relationship between school and student is that of principal and agent, master and servant, or employer and employee.81 The court stated that scholarships do not change the situation; **while a scholarship is a** form of **payment, it is not a wage**. 82 The court cites numerous cases across many jurisdictions that support the conclusion that the relationship between universities and students is primarily academic, and not economic, in nature. Up to this point, universities have been immune from judgments that other employers would typically have to pay. *Kavanagh* and *Rensing* are both premised on the fact that **NCAA student athletes do not receive wages and therefore are not employees**. For this reason only, workers compensation and tort claims have not held up in court. Should the schools begin to pay their student athletes, however, this relationship will change; the universities’ primary defense to these claims will disappear. This change will bring catastrophic results to universities which will result in significantly higher litigation and settlement expenses and possibly the elimination of collegiate athletics altogether. Cases with factual scenarios similar to Kavanagh, Rensing, and Waldrep will be re-litigated and possibly decided differently. Future workers compensation and tort cases will weigh in favor of the students and against the university. What was once a frivolous lawsuit because students were not employees will become a valid cause of action. Universities can no longer file a motion to dismiss the case early on based on Kavanagh. This will significantly increase the legal costs of universities in addition to increasing their liability exposure. Universities could be liable for any athletic related injury. Universities will be forced to pay for the ongoing medical expenses from any injury, possibly even something as extreme as Kent Waldrep’s ongoing medical expenses. Most athletic departments already operate at a deficit. These additional expenses might force schools to reduce their liability by discontinuing their dangerous sports, or possibly even all athletics. What started as a crusade for ensuring fairness for student athletes would result in the cancelling of their only route into a four year university.

C. Standards

1. Ground. 2 internal links.

(a) I lose the libertarianism NC because freedom of contract arguments don’t apply to student-athletes who don’t have a contract of hire. Libertarianism is the only good NC on this topic.

(b) None of the standard empirics about minimum wage apply because those studies analyzed people who already receive wages. Empirics are core neg ground because they’re the majority of the lit; this topic is hotly debated by economists.

2. Predictable limits. The logic of their aff justify a ton of affs about any college extracurricular

**Pocono Record 14** writes[[3]](#footnote-3)

Paying student athletes has to be about the worst idea since McLobster or Heinz Mystery Color ketchup. And it will create more adverse ripples than a first round upset in an NCAA March Madness tournament bracket. The National Labor Relations Board recently ruled Illinois' Northwestern University football players were employees, entitled to join a union. That can lead to student-athlete compensation. After all, these universities are raking in the dough on the backs and hard work of student athletes. Why shouldn't the players get a piece of the pie? Oh, where to start. Some students are awarded scholarships to attend and play. That can amount, in some cases, to $50,000 in tax-free compensation in the form of education. Not bad for a kid out of high school. Now the not-so-obvious. **If college football players are considered employees, then so would track and field competitors, volleyball players and** members of **the swim team.** There goes the budget for competitive college sports programs. Will the "employees" ruling affect **other competitors, like** the **chess or debate teams**? They **work hard and sacrifice, too. Shouldn't they be paid?** It's a slippery slope. I call it a road to de-education. More ripples: Professors use graduate students to help conduct research. Are the students entitled to a cut in the patents many of these studies create? Even worse, pay-for-play may transform college athletics from an educational opportunity into a job market.

Predictable limits are key to fairness and education because I can’t engage the specifics of their aff if I have to prep 100 case negs.

Only limited topics protect participants from research overload which materially affects our lives outside of round.

**Harris 13** writes[[4]](#footnote-4)

I understand that there has been some criticism of Northwestern’s strategy in this debate round. This criticism is premised on the idea that they ran framework instead of engaging Emporia’s argument about home and the Wiz. I think this criticism is unfair. Northwestern’s framework argument did engage Emporia’s argument. Emporia said that you should vote for the team that performatively and methodologically made debate a home. Northwestern’s argument directly clashed with that contention. My problem in this debate was with aspects of the execution of the argument rather than with the strategy itself. It has always made me angry in debates when people have treated topicality as if it were a less important argument than other arguments in debate. Topicality is a real argument. It is a researched strategy. It is an argument that challenges many affirmatives. The fact that other arguments could be run in a debate or are run in a debate does not make topicality somehow a less important argument. In reality, for many of you that go on to law school you will spend much of your life running topicality arguments because you will find that words in the law matter. The rest of us will experience the ways that word choices matter in contracts, in leases, in writing laws and in many aspects of our lives. Kansas ran an affirmative a few years ago about how the location of a comma in a law led a couple of districts to misinterpret the law into allowing individuals to be incarcerated in jail for two days without having any formal charges filed against them. For those individuals the location of the comma in the law had major consequences. Debates about words are not insignificant. Debates about what kinds of arguments we should or should not be making in debates are not insignificant either. **The limits debate** is an argument that **has real** pragmatic **consequences.** I found myself earlier this year judging Harvard’s eco-pedagogy aff and thought to myself—I could stay up tonight and put a strategy together on eco-pedagogy, but then I thought to myself—why should I have to? Yes, **I could put together a strategy against any random argument** somebody makes employing an energy metaphor **but** the reality is **there are only so many nights to stay up all night researching. I would like to** actually spend time **play**ing **catch** with my children occasionally or maybe even **read a book or go to a movie** or spend some time with my wife. **A world where there are** an **infinite** number of **affirmatives** is a world where the demand to have a specific strategy and not run framework is a world that **says this community doesn’t care whether** its **participants have a life** or **do well in school or spend time with their families.** I know there is a new call abounding for interpreting this NDT as a mandate for broader more diverse topics. The reality is that will create more work to prepare for the teams that choose to debate the topic but will have little to no effect on the teams that refuse to debate the topic. Broader topics that do not require positive government action or are bidirectional will not make teams that won’t debate the topic choose to debate the topic. I think that is a con job. I am not opposed to broader topics necessarily. I tend to like the way high school topics are written more than the way college topics are written. I just think people who take the meaning of the outcome of this NDT as proof that we need to make it so people get **to talk about anything** they want to talk about **without having to debate** against **Topicality or framework** arguments are interested in constructing a world that **might make debate an unending nightmare** and not a very good home in which to live. **Limits**, to me, **are a real impact because I feel their impact** in my **everyday** existence.

Research shows that research overload leads to superficial education, meaning we won’t learn about the aff or anything else.

**Chokshi 10** writes[[5]](#footnote-5)

When it comes to focus, turning on the spotlight may not matter as much as our ability to dim the ambient light. Nicholas Carr argued on Saturday in The Wall Street Journal that the Internet is making us dumber and on Monday The New York Times had a front-page feature on the mental price we pay for our multi-tasked lifestyles. If we are indeed losing our ability to think deeply, the key to fighting back may lie in a subtlety: focus may be more about our ability to filter out distractions than our ability to home in on the issue at hand. Carr posed his idea that technology is making us stupid in a 2008 Atlantic cover story and his forthcoming book "The Shallows" is a longer rumination on the theory. **According to professors and research cited in The Times piece "the idea that information overload causes distraction was supported by more and more research." And those distractions**, according to research Carr cites**, are forcing us to change the way we think. Deep thought is losing ground to superficiality.** So, if our multitasking lifestyle causes distraction, and distraction leads to superficial thinking, how do we fight back? Carr offers some advice:

3. Legal precision

(a) Court precedent and Congressional intent agree that student-athletes aren’t employees

**ACE 14** writes[[6]](#footnote-6)

Students who participate in intercollegiate athletics (“student-athletes”) and receive athletic scholarships are not employees and therefore not subject to the National Labor Relations Act (“NLRA”). Athletics is part of the educational experience; it enriches learning and imparts lessons for life. Students pursue intensively a range of extra-curricular and co-curricular activities, among them athletics, as part of the overall education college affords. The institutions’ mission is education, and virtually no institutions earn a surplus from the athletics program. Student-athletes participate for their own benefit; they do not render services for compensation. Athletic scholarships, which are calibrated to the cost of attendance, not services rendered, and are similar to other forms of conditional financial aid, do not change this equation. **Neither the Board’s precedents nor Congressional intent support the Regional Director’s opposite view**. Declaring students to be employees would be contrary to the policy of the NLRA. And **under Brown University, NLRB** 483 (20**04**)**,** intercollegiate **student-athletes** are not subject to the NLRA because they **are “primarily students”**. 2 **Congress, courts, and executive agencies have consistently recognized that college athletics is part of the educational program, not employment. Thus Congress** twice **enacted Title IX protections for intercollegiate athletics instead of relying on Title VII employment discrimination protections**, and for that same reason student-athletes are treated as students, not employees, in a multitude of other legal contexts.

(b) Common law agrees that student-athletes aren’t employees

**ACE 14** writes[[7]](#footnote-7)

The receipt of a scholarship does not alter the basic relationship between student and institution, turning student-athlete into employee. **Under the common law definition, an employee** is one who **performs services** “for another” or **“in the service of another” under a contract of hire, subject to the other’s right of control and in return for payment**. Boston Med. Ctr. Corp., 330 NLRB 152, 160 (1999). **Student-athletes** fail this test because they **do not perform services for educational institutions, and** accordingly **athletic scholarships are not compensation for services rendered**. Nothing about the receipt of a scholarship transforms the student into an employee.

Common law’s emphasis on precedent teaches us analogical reasoning which is a portable skill and is key to moral progress

**Sunstein 93** writes[[8]](#footnote-8)

If the argument I have made is plausible, there may be much more to be said in favor of **the common law method** than is now popular. That method **will have within it** resources unlikely to be available to anyone laying down rules in advance. It follows that a large task for a legal system based on a general enthusiasm for rules is to introduce **the virtues of analogical reasoning**. Debates in contemporary administrative law are often about precisely this point.162 Many people have tried to obtain, in a rule-pervaded, statutory era, some of the advantages of analogical thinking and of particular examination of particular contexts. 163 IV. CONCLUSION **Analogical reasoning** is the conventional method of the lawyer; it **plays a large role in everyday thinking** as well. **Its distinctive properties are** a requirement of **principled consistency, a focus on concrete particulars**, incompletely theorized judgments, and the creation and testing of principles having a low or intermediate level of generality. Because of its comparative lack of ambition, this form of reasoning has some important disadvantages. Compared with the search for reflective equilibrium, it is insufficiently theoretical; it does not account for its own low-level principles in sufficient depth or detail. Compared with economics and empirical social science, it is at best primitive on the important issue of likely social consequences. Law should be more attuned to facts, and on this score analogical thinking may be an obstacle to progress. But **in a world with limited time and capacities, and** with **sharp disagreements on first principles, analogical reasoning has** some **beneficial features** as well. Most important, **this form of reasoning** does not require people to develop full theories to account for their convictions; it **promotes moral evolution over time;** it **fits uniquely well with** a system based on principles of **stare decisis**; and it allows people who diverge on abstract principles to converge on particular outcomes. In any case **it is unsurprising that analogical reasoning continues to have enormous importance in legal and political discussion**. A notable aspect of analogical thinking is that people engaged in this type of reasoning are peculiarly alert to the inconsistent or abhorrent result, and they take strong convictions about particular cases to provide reasons for reevaluating their views about other cases or even about apparently guiding general principles. 164 The emphasis on particular cases and particular convictions need not be regarded as an embarrassment, or as a violation of the lawyer's commitment to prin- ~ip1e.l~~ On the contrary, it should be seen as a central part of the exercise of practical reason in law (and elsewhere). In this light, it seems most unfortunate that analogical reasoning has fallen into ill repute. To abandon this method of reasoning may be to give up, far too quickly, on some of the most useful methods we have for evaluating our practices, and for deciding whether to change them through law.

D. Fairness is a voter since it’s a gateway issue to deciding the better debater. Education is a voter since it’s the end-goal of debate. Substance doesn’t matter unless there’s an educational benefit to discussing it.

Drop the debater—

1. The NC was skewed. I can’t redo it after the 1AR shifts.

2. Key to deterrence. Drop the arg means aff will run abusive cases for the time skew.

3. Jurisdiction. Can’t vote for a nontopical plan.

4. Depth. Reject-the-arg theory forces us to cover theory and substance which leads to shallow theory debates that set worse norms for the activity.

Aff only gets RVIs if they concede the violation, the voter, and that theory is evaluated through competing interps. 4 reasons.

1. It’s key to reciprocity because I meets, reject the arg, and reasonability make RVIs a nib for the aff which gives the aff a 4 to 1 advantage on theory.

2. Only offense to a counter-interp can trigger an RVI. If the aff doesn’t win that my interp is worse for debate, then it makes no sense to vote aff to deter it.

3. If the aff is going all in on theory with an RVI, they already have a reciprocal source of offense, so I meets and reasonability aren’t key.

4. Double-bind. If the I meet or reject the arg is false, the aff doesn’t need them. If the I meet or reject the arg is true, aff doesn’t need the RVI.

Prefer competing interpretations because reasonability is arbitrary and invites judge intervention.

### Tort Liability DA

Courts let universities escape tort liability for student athletes now. Paying student athletes changes this, risking the collapse of college athletics

**Litchfield 13** writes[[9]](#footnote-9)

Classifying student athletes as employees will significantly expand tort liability for universities **Currently, universities** have **escape**d **liability for many** of their student **athletes’ missteps**. Because student athletes are not employees of the university, the universities are not liable under the theory of respondeat superior. Kavanagh v. Trustees of Boston University, 795 N.E.2d 1170 (Mass.2003) supports this proposition. A Boston University player punched Kavanagh, an opposing basketball player, in the face and broke his nose during a game. Kavanagh sued on the theory that the Boston student athlete, a senior on scholarship, was an agent of the university. The Supreme Judicial Court of Massachusetts firmly rejected Kavanagh’s logic. The student is a buyer of education rather than an agent.... [A] student retains the benefit of that education for himself rather than for the university.” Hanson v. Kynast, 24 Ohio St.3d 171, 174, 494 N.E.2d 1091 (1986) (member of university lacrosse team not “agent” of university). While schools may benefit in various ways from the presence of a particular student, or may benefit in the future from a former student's later success, the student does not attend school to do the school's bidding. Kavanagh has cited no authority for the proposition that the relationship between school and student is that of principal and agent, master and servant, or employer and employee.81 The court stated that scholarships do not change the situation; while a scholarship is a form of payment, it is not a wage. 82 The court cites numerous cases across many jurisdictions that support the conclusion that the relationship between universities and students is primarily academic, and not economic, in nature. Up to this point, **universities have been immune from judgments that other employers** would **typically** have to **pay**. ***Kavanagh* and *Rensing* are** both **premised on the fact that NCAA** student **athletes do not receive wages** and therefore are not employees. For this reason only, workers compensation and tort claims have not held up in court. **Should** the **schools** begin to **pay** their **student athletes,** however, **this** relationship will change; the universities’ primary defense to these claims will disappear. This change **will bring** catastrophic results to universities which will result in significantly **higher litigation and settlement expenses and possibly** the **elimination of collegiate athletics altogether**. Cases with factual scenarios similar to Kavanagh, Rensing, and Waldrep will be re-litigated and possibly decided differently. Future workers compensation and tort cases will weigh in favor of the students and against the university. What was once a frivolous lawsuit because students were not employees will become a valid cause of action. Universities can no longer file a motion to dismiss the case early on based on Kavanagh. This will significantly increase the legal costs of universities in addition to increasing their liability exposure. **Universities could be liable for any athletic** related **injury. Universities will be forced to pay** for the **ongoing medical expenses** from any injury, possibly even something as extreme as Kent Waldrep’s ongoing medical expenses. **Most athletic departments already operate at a deficit**. These **additional expenses might force schools to reduce** their **liability by discontinuing** their dangerous sports, or **possibly** even **all athletics**. What started as a crusade for ensuring fairness for student athletes would result in the cancelling of their only route into a four year university.

Collapse of college sports hurts minority students and spills over to kill general academic funding from private donors

**Adler 14** writes[[10]](#footnote-10)

The tragedy would be that literally **thousands of athletes** could or **would no longer have the opportunity to be**come **student-athletes if collegiate sports collapsed**. Many of these kids would never see the inside of a major university. Many of these athletes are great students and statistics show they graduate at about the same rate as other college entrants. Of course, **many** of these **student athletes** that both enter and graduate from universities across the country **are minority students. Would they gain admission and be able to pay for their education without** college **sports scholarships?** I think **no**t. **And** lest we forget **the general public** who attend, watch and **support both** college **athletics as well as** college **academics. Virtually every study shows that a successful athletic program has a very positive impact on general academic giving**. Further, **sports** are often the glue that **often hold**s **town and gown together**.

Private donations are key to research funding at universities

**Odisho 13** writes[[11]](#footnote-11)

**With federal funding** in the state of Illinois **decreasing**, the University has seen an increase in **private donations** in recent years, which **help**s to **fund expenses**. Some of these expenses include student recruitment and retention, said Marlah McDuffie, associate dean for advancement in the College of Media. “We are increasingly relying on private funding to handle very basic needs from scholarships, internships and faculty support,” McDuffie said. **Cuts from the federal budget may cause long-term harm to research, and universities must think** creatively **about how they will fill** those **gaps in the budget**, said Melissa Edwards, director of research communications in the Office of the Vice Chancellor for Research. “The problems facing society aren’t going away, and as a land grant, research intensive university, we have an obligation to create knowledge for a diverse and complex world,” Edwards said. **Private donations**, which come from individuals and corporations, **provide funding to find answers to issues in society**. This **private funding is critical to higher education, especially** in **public education, which tends to rely on federal funding**. Most of these private donations come from University alumni and private donors. These donations have helped the University set records in regards to how much has been raised. “We also established a new record raising, in what we call new business, $434.9 million,” said Don Kojich, vice president for marketing and communications at the University of Illinois Foundation. New business includes new gifts, grants, pledges and deferred commitments, which come from a donor’s last will and testament, but does not necessarily include donors who haven’t previously donated.

University research is key to US tech and science leadership

**Economist 10** writes[[12]](#footnote-12)

WHAT do the following have in common: the bar code, congestion charging, the cervical Pap smear and the internet? All emerged from work done at **America's pre-eminent research universities**. The central contention of Jonathan Cole's book is that these mighty institutions are “creative machines unlike any other that we have known in our history”. They **stand at the centre of America's** intellectual and **technological global leadership**, but are now under threat as never before. Professor **Cole** has worked all his life at one of these institutions, Columbia, where he was provost for 14 years from 1989 until 2003. His book is really three, each a magisterial work. First, he **sets out a**n admirably **comprehensive history of** how **America's great universities** came into being. Then, he trawls for examples of the enriching inventiveness of these institutions, **listing the extraordinary** range of **innovations in tech**nology **and** in **thinking that** have **sprung from their research**. Finally, he outlines the forces that threaten America's research universities. The author describes how these institutions built upon Germany's model of the 19th century, with its combination of research and teaching; how they benefited from America's early enthusiasm for mass education as a route to social mobility; and how they hit the jackpot in the 1930s, when many brilliant academics in Germany and Austria fled to American universities (some of which had recently been purging Jews from their own academic bodies). In the post-war era, the research universities—he reckons about 260 institutions might now claim the name, of which maybe 100 are key—became far larger and more complex. Many turned into “full service” universities, with a clutch of professional schools teaching business, medicine, law and engineering. A flood of federal and foundation funding increased the size of individual departments, bringing benefits of scale. Success bred success. **In** 20**01, America produced a third of the world's science and engineering articles in refereed journals, and in** three of the **past** four **years its academics received two-thirds of** the **Nobel prizes for science and economics.** No wonder **America's great universities lure the world's cleverest students and** the **finest academics**, many of whom stay to enrich their new country.

US science and tech leadership is key to science diplomacy which solves every existential risk. **Fedoroff 8** writes[[13]](#footnote-13)

Chairman Baird, Ranking Member Ehlers, and distinguished members of the Subcommittee, thank you for this opportunity to discuss science diplomacy at the U.S. Department of State. The U.S. is recognized globally for its leadership in science and technology. Our scientific strength is both a tool of “soft power” – part of our strategic diplomatic arsenal – and a basis for creating partnerships with countries as they move beyond basic economic and social development. Science diplomacy is a central element of the Secretary’s transformational diplomacy initiative, because science and technology are essential to achieving stability and strengthening failed and fragile states. S&T advances have immediate and enormous influence on national and global economies, and thus on the international relations between societies. Nation states, nongovernmental organizations, and multinational corporations are largely shaped by their expertise in and access to intellectual and physical capital in science, technology, and engineering. Even as S&T advances of our modern era provide opportunities for economic prosperity, some also challenge the relative position of countries in the world order, and influence our social institutions and principles. **America must remain at the forefront** of this new world **by maintaining its tech**nological **edge**, and leading the way internationally through science diplomacy and engagement. The Public Diplomacy Role of Science Science by its nature facilitates diplomacy because it strengthens political relationships, embodies powerful ideals, and creates opportunities for all. **The global scientific community embraces** principles Americans cherish: **transparency,** meritocracy, accountability, the **objective** evaluation of **evidence, and** broad and frequently **democratic participation.** Science is inherently democratic, respecting evidence and truth above all. **Science is** also **a common global language, able to bridge** deep **political and religious divides**. Scientists share a common language. Scientific interactions serve to keep open lines of communication and cultural understanding. As scientists everywhere have a common evidentiary external reference system, members of ideologically divergent societies can use the common language of science to cooperatively address both domestic and the increasingly trans-national and global problems confronting humanity in the 21st century. There is a growing recognition that science and technology will increasingly drive the successful economies of the 21st century. Science and technology provide an immeasurable benefit to the U.S. by bringing scientists and students here, especially from developing countries, where they see democracy in action, make friends in the international scientific community, become familiar with American technology, and contribute to the U.S. and global economy. For example, in 2005, over 50% of physical science and engineering graduate students and postdoctoral researchers trained in the U.S. have been foreign nationals. Moreover, many foreign-born scientists who were educated and have worked in the U.S. eventually progress in their careers to hold influential positions in ministries and institutions both in this country and in their home countries. They also contribute to U.S. scientific and technologic development: According to the National Science Board’s 2008 Science and Engineering Indicators, 47% of full-time doctoral science and engineering faculty in U.S. research institutions were foreign-born. Finally, some **types of science** – particularly those **that address** the **grand challenges** in science and technology – **are inherently** international in scope and **collaborative** by necessity. The ITER Project, an international fusion research and development collaboration, is a product of the thaw in superpower relations between Soviet President Mikhail Gorbachev and U.S. President Ronald Reagan. This reactor will harness the power of nuclear fusion as a possible new and viable energy source by bringing a star to earth. ITER serves as a symbol of international scientific cooperation among key scientific leaders in the developed and developing world – Japan, Korea, China, E.U., India, Russia, and United States – representing 70% of the world’s current population. The recent elimination of funding for FY08 U.S. contributions to the ITER project comes at an inopportune time as the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project had entered into force only on October 2007. The **elimination of** the promised **U.S. contribution drew** our **allies to question our** commitment and **credibility** in international cooperative ventures. More problematically, **it jeopardizes** a platform for reaffirming U.S. **relations with key states**. It should be noted that even at the height of the cold war, the United States used science diplomacy as a means to maintain communications and avoid misunderstanding between the world’s two nuclear powers – the Soviet Union and the United States. In a complex multi-polar world, relations are more challenging, the threats perhaps greater, and the need for engagement more paramount. Using Science Diplomacy to Achieve National Security Objectives The welfare and stability of countries and regions in many parts of the globe require a concerted effort by the developed world to address the causal factors that render countries fragile and cause states to fail. Countries that are unable to defend their people against starvation, or fail to provide economic opportunity, are susceptible to extremist ideologies, autocratic rule, and abuses of human rights. As well, **the world faces** common threats, among them climate change, **energy and water shortage**s, public **health emergencies, environmental degradation,** poverty, **food insecurity, and** religious **extremism**. These threats can undermine the national security of the United States, both directly and indirectly. Many are blind to political boundaries, becoming regional or global threats. The United States has no monopoly on knowledge in a globalizing world and the **scientific challenges facing humankind are enormous**. Addressing these common challenges demands common solutions and necessitates scientific cooperation, common standards, and common goals. We must increasingly harness the power of American ingenuity in science and technology through strong partnerships with the science community in both academia and the private sector, in the U.S. and abroad among our allies, to advance U.S. interests in foreign policy. There are also important challenges to the ability of states to supply their populations with sufficient food. The still-growing human population, rising affluence in emerging economies, and other factors have combined to create unprecedented pressures on global prices of staples such as edible oils and grains. Encouraging and promoting the use of contemporary molecular techniques in crop improvement is an essential goal for US **science diplomacy**. An essential part of the war on terrorism is a war of ideas. The creation of economic opportunity **can** do much more to **combat** the rise of **fanaticism** than can any weapon. The war of ideas is a war about rationalism as opposed to irrationalism. Science and technology put us firmly on the side of rationalism by providing ideas and opportunities that improve people’s lives. We may use the recognition and the goodwill that science still generates for the United States to achieve our diplomatic and developmental goals. Additionally, the Department continues to use science as a means to reduce the proliferation of the weapons’ of mass destruction and prevent what has been dubbed ‘brain drain’. Through cooperative threat reduction activities, former weapons scientists redirect their skills to participate in peaceful, collaborative international research in a large variety of scientific fields. In addition, **new global efforts focus on** improving **biological, chemical, and nuclear security** by promoting and implementing best scientific practices as a means to enhance security, increase global partnerships, and create sustainability.

Adopt a parliamentary model to account for moral uncertainty. This entails minimizing existential risks. **Bostrom 9** writes[[14]](#footnote-14)

It seems people are overconfident about their moral beliefs.  But **how should one** reason and **act if one** acknowledges that one **is uncertain about morality** – not just applied ethics but fundamental moral issues? if you don't know which moral theory is correct?

It doesn't seem **you can[’t] simply plug your uncertainty into expected utility** decision theory and crank the wheel; **because many** moral **theories** state that you **should not** always **maximize** expected **utility.**

Even if we limit consideration to consequentialist theories, it still is hard to see how to combine them in the standard decision theoretic framework.  For example, suppose you give X% probability to total utilitarianism and (100-X)% to average utilitarianism.  Now an action might add 5 utils to total happiness and decrease average happiness by 2 utils.  (This could happen, e.g. if you create a new happy person that is less happy than the people who already existed.)  Now what do you do, for different values of X?

The problem gets even more complicated if we consider not only consequentialist theories but also deontological theories, contractarian theories, virtue ethics, etc.  We might even throw various meta-ethical theories into the stew: error theory, relativism, etc.

I'm working on a paper on this together with my colleague Toby Ord.  We have some arguments against a few possible "solutions" that we think don't work.  On the positive side we have some tricks that work for a few special cases.  But beyond that, the best **we have managed** so far is **a** kind of **metaphor, which** we don't think is literally and exactly correct, and it is a bit under-determined, but it **seems to get things roughly right** and it might point in the right direction:**The Parliamentary Model.**  Suppose that you have a set of mutually exclusive moral theories, and that you assign each of these some probability.  Now imagine that **each** of these **theorie**s **gets to send** some number of **delegates to The Parliament**.  The number of delegates each theory gets to send is **proportional to the probability of the theory.**  Then the delegates bargain with one another for support on various issues; and the Parliament reaches a decision by the delegates voting.  What you should do is act according to the decisions of this imaginary Parliament.  (Actually, we use an extra trick here: we imagine that the delegates act as if the Parliament's decision were a stochastic variable such that the probability of the Parliament taking action A is proportional to the fraction of votes for A.  This has the effect of eliminating the artificial 50% threshold that otherwise gives a majority bloc absolute power.  Yet – unbeknownst to the delegates – the Parliament always takes whatever action got the most votes: this way we avoid paying the cost of the randomization!)

The idea here is that moral theories get more influence the more probable they are; yet **even a** relatively **weak theory can still get its way on some issues** that the theory think are extremely important **by sacrificing** its influence **on other** i**s**sues that other theories deem more important.  For example, **suppose you assign 10% probability to** total **util**itarianism and 90% to moral egoism (just to illustrate the principle).  Then **the Parliament** would mostly take actions that maximize egoistic satisfaction; however it **would make some concessions to util**itarianism **on** issues that utilitarianism thinks is especially important.  In this example, the person might donate some portion of their income to **existential risks** research and otherwise live completely selfishly.

I think there might be wisdom in **this model**.  It **avoids the** dangerous and **unstable extremism** that would result **from letting one’s current favorite moral theory completely dictate action**, while still allowing the aggressive pursuit of some non-commonsensical high-leverage strategies so long as they don’t infringe too much on what other major moral theories deem centrally important.

### Feminism K

The aff’s acceptance of “pay-for-play” as the solution to racism in college sports strengthens patriarchy. It also contributes to racism which turns the case

**Buzuvis 14** writes[[15]](#footnote-15)

As a third method of doing social justice feminism, Kalsem and Williams suggest that feminist solutions be informed by interlocking oppressions, which “keeps the focus on bottom-up strategies in fashioning remedies.”42 Title IX advocates are understandably concerned about actual and hypothetical efforts to expand the commercialization of college athletics by deregulating and letting the market take over—efforts poised not only to detract even more from the resources available to women’s sports, but to further encode their inferior status.43 The **patriarchy uses sport as a tool to maintain male dominance by using it to ascribe to male participants** the **power and social status associated with athletic participation and success**—such as strength and physical competence, social status and leadership ability, and character attributes such as diligence and cooperation.44 As such, stakeholders in the patriarchy are motivated to exclude women from sport. Where that is not possible due to the intervention of law, stakeholders seek to deter women’s participation, minimize the importance of their opportunities, and to culturally define women’s sports as a different and lesser version than the male original.45 While college athletics is still teeming with examples of athletics as a source of male privilege, Title IX has at least helped women begin to chip away at the cultural tendency to define athlete as a male default. In this spirit, **Title IX advocates would be rightfully concerned about efforts to pay student athletes**, even—though uncomfortably—**when** those proposals are **framed as redress for** the **racial exploitation** inherent in a system of college sport that is staunchly amateur to the detriment of athletes and unabashedly commercial to the benefit of the institution.46 **Imagine a world where colleges are allowed to pay** their **athletes. In this** hypothetical **world are male and female athletes drawing equal pay for equal work?** Regardless of how we might prefer to interpret Title IX on this issue, **the fact that female athletes receive fewer scholarship dollars**47 **and female athletic department employees lower salaries** than their male counterparts48 **suggests that pay-for-play will be disparate as well**. This will occur either in blatant disregard of law, as so many Title IX violations do, or under the blanket of a perceived justification in the “market forces” that cause some men’s sport to be more revenue-producing than women’s sports. The result will be a privileged “professional” status bestowed on some athletes, but which only men are eligible to attain, reinforcing male dominance in sport in the service of the patriarchy. For its part, the NCAA staunchly opposes such reform as undermining of its amateurism values, but that hasn’t stopped it from toying with plans to pay athletes under a label other than “salary.” 49 For a brief window in 2011, the NCAA allowed Division I universities to provide an additional $2000 cost-ofliving “stipend” to those with full athletic scholarships, as a way to offset the personal deficit many athletes face by virtue of their participation in college athletics.50 This proposal served to justify gender-equity concerns about the related, larger issue of pay-forplay. By linking the stipend to full-scholarship sports, the NCAA assured its disproportionate benefit to male college athletes. Even the NCAA recognized that this plan would have a gendered effect when it started a conversation with the Department of Education about possibly “exempting” these stipends from having to comply with Title IX. While the NCAA eventually shelved this particular stipend proposal, it is certainly not done addressing the issue of athlete compensation. It is inevitable that **“solving” the athlete exploitation problem by paying them** (with stipends, salaries, or otherwise) is a solution that **would disadvantage female athletes. To accept it as an appropriate solution** to the problem of athlete exploitation not only undermines the educational purpose of athletics, it **betrays** the principal of **gender equity**, a betrayal that can easily lead to other, similar exceptions that gut the meaning of equality. Consider in this regard an NCAA push for a Title IX exemption so that institutions can pay male athletes, for example. including college athletics, operates a tool of White society to maintain racial supremacy. Sport promotes a handful of highly visible, well-paid professional athletes—or potentially college athletes, in a world of pay-for-play—to serve as decoys to distract hundreds of boys into pursuing the same “hoop dreams.”57 Statistically, however, most will not make it. Instead, they will have forgone opportunity to pursue other careers—careers with the potential to provide personal fulfillment but also to destabilize the White hegemony in such fields as law, medicine, politics, education and other fields with high social capital. **If sport contributes to** society’s **racial inequality** now**, pay-for-play exacerbates this problem by** creating stronger incentives to lure hopefuls into college athletics, while **providing universities an excuse not to care about** the **moral** (and public image) **implications of failing to provide student athletes with a meaningful education**. Those who fail to turn officially “pro” after college may at least have four years of salary to cushion the blow,58 but are even less likely to have education to fall back on. In its current form, **big-time college sport contributes to racial inequality by providing a narrow range of role models that sell false hope in the myth of salvation through athletics**. As further commercializing college athletics promotes the patriarchy, it also promotes black oppression as well.

The alternative is to reject compensation for players and endorse a paradigm shift in favor of downsizing college sports—unlike the aff, this addresses the root cause of exploitation of student-athletes

**Buzuvis 14** writes[[16]](#footnote-16)

So **how** then, **should advocates for social justice seek to reform college athletics?** In addition to finding race and gender-conscious ways to talk about pay-for-play, we also need to find race- and gender-conscious ways to end the problem of exploitation in its current form. In other words, **we must change the system, not** to **compensate for exploitation, but to eliminate it at its very source**. Primarily, **what this means is** advocating for **a paradigm shift to align college athletic departments with educational values reflected in their mission statements** and their tax status. Athletic programs must be scaled back to a size and scope that would be sustainable and appropriate even in the absence of substantial revenue. **This would require** the most **expensive athletic programs** in the NCAA’s Division I **to downsize** (or “right-size”) their administration and coaching ranks, athletic department salaries, facilities, competitions, and travel. **Reducing the cost of athletics would eliminate** the **pressure on universities to pursue revenue, and in so doing, to exploit the labor of** their **student-athletes**. It allows them to have a normal college life and a meaningful education.

The kritik’s method of social justice feminism is key to challenging white patriarchy and puts Occupy-style pressure on the system

**Buzuvis 14** writes[[17]](#footnote-17)

**Social justice feminism provides a lens through which to imagine Title IX advocates’ response to** ever-**commercializing college athletics** that goes beyond the “bean-counting” aimed at ensuring equitable number of opportunities and resources for female athletes. **Social justice feminism** demands a broader focus on reform that **tackles the system giving rise to** the **inequality, and** to do so in a manner that **takes into account race-based and other forms of subordination** created by that system as well. Borrowing from the three methodological tools suggested by Professors Kalsem and Williams,10 this article will first explore the history of athletics (and in particular, **college athletics**) to describe how it **has historically functioned as a tool of White patriarchy**. Second, this article will examine “the inter-relationships between interlocking oppressions” inherent in the commercialized model of college athletics, which alienates and marginalizes athletes in a manner disproportionate to race and gender privilege. Finally, this article will make the case for college athletics reform as a social justice issue, not just a Title IX issue. **Efforts to** deregulate college athletics and **pay athletes** like employees **are movin**g college athletics **in the exact wrong direction** where both gender and racial equality is concerned. While we must, as social justice feminists, resist these efforts, we cannot in good conscience be satisfied with that. We must also push for **a paradigmatic shift** in college athletics, one that requires a redistribution of athletic department opportunities and resources to allow for broader and more egalitarian access to education by students of all genders, races, and means. To that end, we **must capitalize** the **collective power of concerned faculty and students to put Occupy-style pressure** on paralyzed presidents and unwilling athletic directors **to take drastic and meaningful steps toward reform**. I. LOST HISTORY OF RACE AND SEX DISCRIMINATION IN COLLEGE ATHLETICS Kalsem and Williams suggest that **one method of social justice feminism involves “looking to history to understand subordinating structures**, seeks to acquire more knowledge with which to understand and then dismantle the bases of societal institutions that perpetuate hierarchies and inequities.”11 By examining what they call “lost” history of race and gender discrimination in athletics, we can contextualize the present controversy about commercialization in ways that help resist framing proposed solutions as pitting gender against race.

## Case

### No Exploitation

Student-athletes aren’t indentured servants. This aff is ridiculous.

**Daugherty 12** writes[[18]](#footnote-18)

These were not people who asked to be paid to attend college. These were folks who paid for the privilege. And let's be clear: **College is a privilege. It is earned, not bestowed**. Some, in fact, are still paying. It's one thing to go to school for free and to leave free of debt. It's quite another to work your way through and depart with a five-figure yoke around your neck. Should college athletes be paid? Why? At the highest levels, here is what they endure. **Here's some of the hardship involved if you are an athlete, attending** a university **for free: A four-year audition for prospective employers**. Or three years, or two. Or basically, whenever you and your pro league of choice agree you've passed the audition. I don't know about you, but when I was a college junior, schlepping to town council meetings on Tuesday nights for my Journalism 301 class, no newspaper editor was there to praise my fascinating reporting on zoning changes in a residential subdivision. When you agree to a full, free ride at a university and you are a football or basketball player, you do so knowing that if you're good enough at what you do, you will get noticed. It's not as if you'll need to spend any time assembling a resume. Your game is your resume. **You will burnish your resume while flying to away games, often in chartered jets, and** staying in **first-class hotels**. If you play basketball, it's likely you will visit a tropical island at least once in your four, free years. If you play football, you could spend a week at a bowl site, where you will get nice gifts from the game's sponsors. Meantime, if scholarship is among your goals, there will be no shortage of attendants at your beck and call. **You will have tutors and study tables**. You will have coaches who assign managers to act as human alarm clocks, in the off chance you accidentally sleep late. In some places, you will be enrolled in classes designed to keep you eligible. **You will have compliant and complicit professors**, interested in the same thing. I was not a college athlete. I did not have tutors or study tables or anyone to make sure I went to class. If I earned an F, I got one. Scholarship was expected. It was, after all, what I was there for. **Did I mention costs?** It costs $57,180 to go to Duke. It's $31,946 to attend Butler. The University of Cincinnati, a public, urban place with lots of commuters, costs $24,942 if you're from out of state, which describes the bulk of football and basketball players. If you want to go to the University of Texas, and you're not a Texan, it's $35,776 a year. Many people who work full-time jobs don't make $35,776 a year. Some even have college degrees. This is a lot of money. **It's the sort of outlay that keeps parents awake** at 3 a.m. **Unless**, of course, **you're the parent of an athlete on full scholarship**, in which case you want to know why he or she isn't getting paid. So many advantages. If you are, say, a member of the men's basketball team at the University of Kentucky, you will have a job waiting for you after you graduate, assuming you do, even if you never get off of John Calipari's bench. **Athletes have built-in connections non-athletes can only dream of. Athletes are not starving their way through** four years of **indentured servitude**. They are not, god help us, "slaves.'' **On most campuses, they're among the privileged classes.**

College athletics isn’t slave labor for student-athletes on scholarships

**Ryder 11** writes[[19]](#footnote-19)

College athletes will never be paid a salary to play for their school. There are far too many logistical, economic and legal hurdles that would have to disappear before paying students could even become a reality. The numbers from ESPN can be deceiving. It's true that big time sports like football and basketball can rake in millions of dollars in revenue, but for most universities that money still isn't enough to cover department costs. **An overwhelming majority of NCAA** student **athletes will make their living doing something else. Those awarded a**n athletic **scholarship get** an opportunity **to play their favorite sport** in state-of-the-art facilities in front of thousands of screaming fans **while getting** a **free education,** free **meals, and** free **housing**. **Depending on the school, a full scholarship can be worth** upwards of **$200,000. A free degree** (especially from a prestigious university) in this economic climate **is a godsend. It's hardly slave labor.**

Scholarships are sufficient to cover everything a student athlete needs to survive at a college

**Dirlam 13** writes[[20]](#footnote-20)

**Athletic scholarships cover just about everything a student-athlete needs to survive for four years** at a major university**. Campus housing,** daily **medical care and free meals via training table are** all **included. Tuition and books are covered** as well. **None of those** things **are chea**p. It costs $57,180 to attend Duke University. The University of Texas charges $35,776 for out-of-state enrollees. Even Butler University charges $31,496 per year. This means many college athletes are being reimbursed with nearly as much money as the average American makes per year. **Leaving a four-year college with a degree will help former players earn more money than those who only have a high school diploma, regardless of whether or not they move on to** a **pro**fessional **sports** career. Students who attain a Bachelor's degree will make $1.1 million more in their lifetimes than non-graduates.

### No Profits

College sports aren’t a revenue machine

**Mendelson 14** writes[[21]](#footnote-21)

**Despite enormous revenues via football and men’s basketball** for the NCAA and a select group of universities — including UF — **most college sports are not** particularly **profitable, and** in fact, **many operate at a loss**. According to a recent study, **just 22 schools profited from football during the** 20**09-**20**10 academic year. College football is hardly the cash cow that some believe the sport to be**. The general consensus seems to be that football players generate enormous revenues, but in the end, it’s only a few select schools that benefit. Many schools spend an upward of $90,000 a year on some athletes.

This means schools can’t afford to pay student-athletes

**Murphy 14** writes[[22]](#footnote-22)

Money allocation **Most colleges** and universities **don’t make** any **money off of athletics**, Elon included. According to a 2013 USA TODAY Sports analysis only 23 of 228 athletics departments at NCAA Division I public schools generated enough money on their own to cover their expenses in 2012. Although athletics is an essential part of the culture and attraction to a university, the revenue it brings in usually doesn’t outweigh the costs of running the programs. Parts of that cost are the salaries of people on the athletic staff, who are already severely underpaid. According to the bureau of labor statistics, the average annual wage of an athletic trainer is $44,720, which is less than the cost of tuition for one student at Elon University. **The athletic staff**, who make it all possible, **is the machine that keeps the programs running** and the organization afloat, **and** is who **needs to get the money first. If they can’t be paid at a reasonable salary,** then **where is this money going to come from for the athletes? Most schools** simply **can’t afford it.**

### HBCUs Turn

Athletic programs at HBCUs are improving now despite past financial issues

**SL 3-30** writes[[23]](#footnote-23)

The **HBCU landscape is in an interesting position. After** a period of **financial insecurity and athletic inequality** which **plagued many schools, the climate appears** to be **less cloudy due to recent events and a strong alumni base** that refuses to let their school and alma mater continue to suffer. **With** the **recent success of Hampton University men's basketball, Langston** University **women's basketball and** the announcement of **the Celebration Bowl**, the **sports programs have used** their on the **court**/field **success to contribute to** the **development and growth of these universities**. The Home Depot has recognized this and has brought back their successful "Retool Your School" program to help in the continued improvement efforts on these campuses. Over the past five years, The Home Depot has awarded approximately $1 million in grant money to HBCUs, and now friends, family, alumni and students can participate in this program to help their school win a share of the $255,000 in grants being awarded this year. Three schools will be awarded $50,000 each, three will be awarded 25,000 each and three will be awarded $10,000 each.

Requiring HBCUs to pay student-athletes destroys their athletic programs and marginalizes the Black community

**Hollingsworth 3-18** writes[[24]](#footnote-24)

For the sake of argument, let us entertain the thought of **paying student-athletes**. While this might help a school with a large fanbase like Ohio State or Alabama, which has successful and affluent alumni, this **would damage smaller schools**. According to a 2007 article by the Wall Street Journal, Ohio State amassed the biggest athletic budget in collegiate sports. However, “The football and men's basketball programs at OSU are the only sports there that turn a profit -- and their revenues support teams other universities have eliminated for lack of funding.” What about schools that don’t have that type of budget, what about the **smaller schools**, the Cinderella’s **in the NCAA** Men’s Basketball Tournament, that **struggle to turn a profit** by entering the tournament? It’s prevalent that **Oliver brought up** the “social, political, and cultural complexities inherent to **the Black American experience,” yet does not account for schools that facilitate** the **learning of the Black community. If** the NCAA and **Universities begin to pay players,** this disparity will not only exist within athletic departments but widen it in social groups as well. Historically Black Colleges and Universities (**HBCUs**) such as Savannah State, **who operate at less than half the budget for** these **larger schools** like UNC, **will have athletic departments that cease to exist**. That is because **HBCUs have** now **taken a hit from bigger** athletic **departments which choose not to schedule their** football **teams** - where these smaller school gain their money - due to strength of scheduling and the new College Football Playoff system. Image a world without Walter Payton or Donald Drive, both of whom came from HBCUs, those programs that they emerged from would eventually disappear completely due to lack of funds. **That leaves multiple student-athletes without** the **means to afford an education and** without **the possibility of advancing their athletic careers.**

### The Onion

There are so many cons!

**Onion 15** writes[[25]](#footnote-25)

As college athletic programs continue to generate millions of dollars in revenue for their schools, advocates for student-athletes have begun pushing for schools to pay their players, while opponents say that compensating athletes has the potential to ruin college sports. **Here are some** pros and **cons of paying student-athletes**: PROS $2,000 per semester could deter students from going pro for millions of dollars Treating college players like pros would encourage them to follow the same high standard of moral conduct as professional athletes Money could help out family members who can’t wait two years to begin leeching off of athlete Kahlil Felder is absolutely dominating in the paint Would give college athletes the capital they need to start chain of fitness centers after graduating Balancing opportunity to make money against risk of debilitating injury better prepares college athletes for professional sports Gainesville, FL not the cheapest town to live in Falls in line with long tradition of paying people for the work they do

CONS

**Could detract from purity of multi-billion-dollar collegiate athletics industry**

**Lax prosecution of criminal charges** against student-athletes **already payment enough**

**May, perhaps, cause student-athletes to focus more on sports than** on **classes**

**Universities should treat athletes with the same indifference as any other** college **student with crushing loan obligations**

**$6 billion pie only so big**

**Players already get free cortisone shots, ice baths, CT scans**

**Some players suck**

**Can’t put a price on the privilege to call yourself a Nittany Lion**

**Costs schools more than doing nothing**

# 2NR T

## General

### Note

[Note: All of the “they’re students first” cards are in the context of ACE’s claim that “even if the common law definition is met, they’re students before employees”; that’s why I added in the “Northwestern ruling definition negates” card so if GHill refers to it and claims they meet common law they violate their CI]

### AT Northwestern Ruling

All of the ACE 14 cards are from an amicus brief criticizing this ruling, so mere reference to the ruling is insufficient to win an I meet.

They have a single ruling, but consistent court precedent goes neg

**ACE 14** writes[[26]](#footnote-26)

**Courts**, too, “in various contexts,” including public immunity and vicarious liability, **have consistently** “**rejected the theory that scholarship athletes are ‘employees’** of their schools.” Kavanagh v. Trs. of Boston Univ., 795 N.E.2d 1170, 1175 (Mass. 2003) (collecting cases). For example, **state workers’ compensation cases hold that scholarship student-athletes are not employees**. See Rensing v. Ind. State Univ. Bd. of Trs., 444 N.E.2d 1170, 1174 (Ind. 1983) (collecting cases).11 **At least one court construing “employee” under the Fair Labor Standards Act**, which is even broader than the NLRA,12 has **reached the same conclusion**. Marshall v. Regis Educ. Corp., 666 F.2d 1324, 1328 (10th Cir. 1981).

Even if they meet the common law definition, they violate the NLRA definition that was used to justify the Northwestern ruling

**ACE 14** writes[[27]](#footnote-27)

Because scholarship student-athletes are not common law employees, the Board need not revisit Brown University, 342 NLRB 483 (2004). But **even if they were common law employees, they would not be employees for purposes of the NLRA because they are “primarily students”** 16 under Brown. A contrary conclusion would conflict with Congressional intent and settled understandings. **The NLRA defines “‘employee’” to “include any employee . . . .”** 29 U.S.C. § 152. **Confronted with a tautology, the Board looks first to** the **common law**. See Brown, 342 NLRB at 495; NLRB v. Town & Country Elec., 516 U.S. 85, 93–95 (1995). **However, Congressional intent controls**. See NLRB v. Bell Aerospace Co., 416 U.S. 267, 275 (1974) (holding that Congress intended to exclude “managerial employees”); Brown, 432 NLRB at 488 (“We look to the underlying fundamental premise of the Act, viz. the Act is designed to cover economic relationships.”); cf. NLRB v. Catholic Bishop, 440 U.S. 490, 507 (1979) (“Accordingly, in the absence of a clear expression of Congress’ intent to bring teachers in church-operated schools within the jurisdiction of the Board, we decline to construe the Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses.”).6 **Congress has never** provided or **intended that scholarship student-athletes qualify as university employees under the NLRA**. In fact, when Congress passed the NLRA it “was thought that congressional power did not extend to” nonprofit colleges and universities. Yeshiva Univ., 444 U.S. at 679.

### Congress Extension

Student athletes are covered by Title IX, not Title VII. That’s Congress implying that Greenhill lost a T debate.

**ACE 14** writes[[28]](#footnote-28)

For example, **Title IX** of the Education Amendments of 1972 **prohibits discrimination on the basis of sex in “any education program** or activity **receiving Federal financial assistance.”** 20 U.S.C. § 1681. **When Congress enacted Title IX** in 1972, **Title VII** of the Civil Rights Act of 1964 **already prohibited sex discrimination in employment, echoing the NLRA’s definition of “employee”** as “an individual employed by an employer.” 42 U.S.C. § 2000e. Still, Congress found it necessary in Title IX to prohibit sex discrimination in education programs or activities. Two years later, in 1974, **Congress amended Title IX to specify that it applied to intercollegiate athletics** and directed the U.S. Department of Health, Education and Welfare to publish implementing regulations. See Pub. L. No. 93-380, 88 Stat. 612 (1974).9 Carrying out this mandate, not only did **the** U.S. **D**epartment **o**f **E**ducation’s predecessor agree that Title IX applied to intercollegiate athletics, but the agency **specifically construed the statute to cover revenue-producing** intercollegiate **sports**. “‘[R]evenue producing intercollegiate athletics are so [i]ntegral to the general undergraduate education program of an institution of higher education that sex discrimination in the administration of a revenue producing athletic activity would necessarily infect the general undergraduate education program of the institution.’” 43 Fed. Reg. 58,070, 58,076 (Dec. 11, 1978) (NPRM). **That** interpretation **would have been superfluous if** the **student-athletes in revenue sports were employees covered by Title VII.**

### AT Revenue=Employees

College athletics barely makes money. It’s not a business; it’s for education.

**ACE 14** writes[[29]](#footnote-29)

Contrary to a popular canard, **for nearly all colleges and universities** the **athletics** program **does not generate net income**. The notion that colleges and universities offer athletic opportunities to generate revenue is demonstrably false. E.g., David Welch Suggs, Jr., Ph.D., Myth: College Sports Are a Cash Cow, The Presidency (Spring 2012), available at http://www.acenet.edu/the-presidency/Pages/Spring-2012.aspx. Northwestern’s 19 sports teams, for example, in aggregate do not generate net revenue. To the contrary, **despite net revenues** from its football program, **Northwestern annually subsidizes its sports programs** with approximately $12.7 million in general revenue. Only a tiny fraction of athletics programs at a tiny fraction of colleges and universities generate net revenue. See id. “[M]ost institutions require institutional funding to balance their athletics operating budget.” Knight Commission, Restoring the Balance at 6. And this economic reality is likely to remain the case into the future. Indeed, “athletics subsidies will continue to grow, both in real terms and as a percentage of institutional budgets.” Suggs, Jr., supra. **Given that athletics programs** as a whole **do not generate revenue, what motivates institutions to offer them? The answer is straightforward**: like many other campus activities, intercollegiate athletics is an integral part of the educational experience. **The institutions are not in the sports business**; rather, **“the ‘business’ of a university is education** . . . .” NLRB v. Yeshiva Univ., 444 U.S. 672, 688 (1980).

### AT Time Commitment=Employees

[Note: The Regional Director of the NLRB who ruled in favor of the Northwestern players took into consideration how much time they spend on football.]

Time commitment is irrelevant; they’re still students

**ACE 14** writes[[30]](#footnote-30)

The Regional Director appeared to place weight on the finding that during the fall semester Northwestern football team members spent 40–50 hours per week on football. Reg’l Dir., Decision and Direction of Election, 6 (Mar. 26, 2014). Yet **the fact that student-athletes spend substantial time** on athletics is not surprising and **does not diminish their status as students**. As a threshold matter, NCAA rules permit only 20 hours of mandatory athletic activity during the week, meaning more than half of the 40 to 50 hours was voluntary. But even a 40-to-50 hour-per-week schedule would not signify that a student-athlete is other than a student. **Even a student who chooses to devote more than 20 hours per week to football would be able to complete a full-time course load as defined by the** U.S. **D**epartment **o**f **E**ducation. See 34 C.F.R. §§ 600.2, 668.8 (defining a full-time academic load for federal student financial aid purposes as a minimum of 12 semester hours per semester, which translates to 36 hours’ total academic work 9 per week). **Students have time both to meet academic standards and** to **give intensive effort to extracurricular activities.**

Student-athletes’ time commitment isn’t for a future professional purpose

**ACE 14** writes[[31]](#footnote-31)

**Student-athlete goals and graduation rates demonstrate** the primacy of **their role as students. Only three percent** of student-athletes **ever turn professional, and only twelve percent** even **want to** do so. A. Grasgreen, “For athletes, a different kind of helicopter parent,” Inside Higher Ed. (Apr. 15, 2014) (citing study presented at annual conference of American College Personnel Association). **About 65% of D**ivision **I student-athletes earn** their **degrees within six years**—a rate comparable to or better than that of the overall group of students entering college.3 Among Bowl-bound Division I college football teams, the overall graduation rate was 72% after adjusting for transfers.4 NCAA rules in effect in 2014–15 bar from post-season play teams from institutions that fail to attain mandated graduation rates. Reform Efforts, http://www.ncaa.org/governance/reform-efforts#awg (last visited June 30, 2014).

## AT Scholarships=Employees

### Common Law Extension

This aff violates the common law definition of employee which has two conditions—the employee renders services and is compensated.

A. Student-athletes don’t render services. This is true even if they generate revenue for the school

**ACE 14** writes[[32]](#footnote-32)

The Restatement Second of Agency § 220 defines a “servant” as a person “employed to perform services in the affairs of another.” (Emphasis added). Nothing could be farther from the reality of student participation in collegiate athletics. The “**students** of a school . . . **are not employees, but consumers of** its product, **education**.” Land v. Workers’ Comp. Appeals Bd., 102 Cal. App. 4th 491, 496 (Cal Ct. App. 2002). Colleges and universities do at times employ students to perform services on their behalf, of course—in dining halls, as office assistants, and in a variety of traditional jobs—but these roles are readily distinguished from that of a student who participates in an educational opportunity. Hanson v. Kynast, 494 N.E.2d 1091, 1095 (Oh. 1986) (student-athlete was “not performing in the course of the principal’s business, i.e., he was not educating students . . . . On the contrary, he was participating in one of the educationally related opportunities offered by the university”); Wall v. Gill, 225 S.W.2d 670, 672 (Ky. 1949). **The distinction between employment and participation in a college**’s **education**al offerings **cannot be ignored** and replaced **by asking**, as the Regional Director did, **whether the activity generates revenue** or benefits the institution. See, e.g., Hanson, 494 N.E.2d at 1095; cf. Todd Sch. for Boys v. Indus. Comm’n, 107 N.E.2d 745, 747 (Ill. 1952) (“[T]hat the work of the students was directed by faculty members and resulted in benefits to the school does not in itself create a relation of employer and employee.”). **Such a broad standard would sweep in a wide range of** campus **organizations** and activities **that indisputably do not involve employment, such as every a cappella singing group that performs a scholarship benefit concert** and every extracurricular activity that generates modest revenue to offset cost. It conflates student participation in activities that enhance education, with work for which an institution would otherwise have to employ non-students—work unconnected to the education students receive. Compare Land, 102 Cal. App. 4th at 496 (recognizing that a student can be a school employee “when a student works in the school’s cafeteria or library for wages in addition to attending classes”), with id. (although entitled to a portion of the net revenue on sale of animals, student injured in animal husbandry class did not qualify as an employee for purposes of worker’s compensation law; the university was “‘rendering service’ to the student by providing its full panoply of educational resources for the student’s use”); cf. Todd Sch., 107 N.E.2d at 747. As explained above, supra I.A, intercollegiate athletics is one of many educational opportunities colleges and universities provide to students. As the California court of appeals explained when it rejected vicarious liability of a university for conduct of a student-athlete: [O]f all of the various sports programs, at least in California, **only** two, i.e., **basketball and football**, **generate significant revenue. These revenues** in turn **support** the other **nonrevenue producing programs. Thus**, conceptually, the **colleges and universities maintaining these athletic programs are not in the “business” of playing football or basketball** any more than they are in the “business” of golf, tennis or swimming. **Football and basketball are simply part of an integrated multisport program** which is part of the education process. Whether on scholarship or not, the athlete is not “hired” by the school to participate in interscholastic competition. Townsend v. State, 191 Cal. App. 3d 1530, 1536 (Cal. Ct. App. 1987); cf. Rensing v. Ind. State Univ. Bd. of Trs., 444 N.E.2d 1170, 1174 (Ind. 1983) (holding scholarship student-athletes are not employees; “[i]f a student wins a Rhodes scholarship or if the debate team wins a national 14 award that undoubtedly benefits the school, but does not mean that the student and the team are in the service of the school”) (internal quotation marks and citation omitted).

Walk-on student-athletes confirm

**ACE 14** writes[[33]](#footnote-33)

The example of walk-on student-athletes is illuminating. **Walk-ons**, whom the Regional Director agreed are not employees, **are subject to the same rigorous schedule as scholarship athletes. Yet it would be absurd to characterize their participation as rendering services** to the institution. For one thing, **they pay tuition without athletic aid**. The notion that a student-athlete would remunerate the institution for the privilege to render services is illogical and counter to experience; **employees do not pay employers for the opportunity to work**. The reason thousands of students play collegiate sports without any athletic scholarship is that they benefit from the experience. Yet **if walk-ons do not render services, the same must be true of scholarship athletes, as both groups of students are subject to the same expectations as team members**. Student-athletes do not render services to the institution; rather, as untold numbers of former and current student-athletes can attest, rewards flow to the student in the form of personal growth.

B. Scholarships aren’t a form of compensation

**ACE 14** writes[[34]](#footnote-34)

Scholarship-athletes do not fit the common law definition of employee for another reason: the **scholarships** they receive **are not compensation** for services rendered. Fundamentally, **athletic scholarships are tuition discounts** for students as consumers of the college’s educational offerings. Scholarships earmarked for students pursuing particular academic or extracurricular activities are common in higher education. See part I, supra & n.1 (collecting examples); Waldrep v. Tex. Emp’rs Ins. Ass’n, 21 S.W.3d 692, 701 (Tex. Ct. App. 2000) (“Financial-aid awards are given to many college and university students based on their abilities in various areas, including music, academics, art, and athletics.”). Conditional scholarships enhance the educational environment by attracting talented students who contribute to campus life, but that intangible benefit does not transform these scholarships into contracts for hire. See id. An academic scholarship, for example, may be conditioned on completion of a particular educational program; yet plainly it is not compensation for services rendered—even though the institution and the department may benefit from the student’s attendance, set degree requirements, and supervise the student’s completion of the academic program. Athletic **scholarships bear no meaningful resemblance to a contract of hire. All the student-athlete need do is participate** in the activity**, just like a student on** a **scholarship for** the **debate** team, the marching band, or English majors. As with other forms of financial aid—and distinct from compensation—**the scholarship amount is based on the student’s cost of attendance, not hours “worked” or contribution to the team**. See 20 U.S.C. § 1087kk (capping the amount of federal student financial aid for the neediest students at the cost of attendance); cf. NCAA, 2013– 14 NCAA Division I Manual §§ 15.01.6, 15.02.5 (capping award of financial aid at “cost of attendance that normally is incurred by students enrolled in a comparable program at that institution” and capping athletic scholarship at cost of tuition and fees, room and board, and required course-related books). The athlete’s skill level, star power, and statistical performance on the field do not affect the amount of award, as would be the case with a contract of hire. In sum, **scholarship student-athletes are not common law employees.**

### Extra AT Scholarships

Court precedent confirms that the NLRA doesn’t cover primarily student relationships

**ACE 14** writes[[35]](#footnote-35)

This silence is hardly surprising. Congress enacted the NLRA to address “strikes, industrial strife and unrest that preceded the Act . . . caused by the ‘inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers.’” Brown, 342 NLRB at 487 (citation omitted). “The Act was premised on the view that there is a fundamental conflict between the interests of the employers and employees engaged in collective-bargaining under its auspices and that [t]he parties . . . proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest.” Id. at 487– 88 (citation and internal quotations omitted). Against this background, application of the NLRA in the context of a college student’s extracurricular athletic activity is plainly misplaced. Indeed, **citing decades of Board precedent, the Board concluded in Brown that Congress never intended the NLRA to cover “primarily student” relationships.** Id. at 488. Under Brown, **the question is whether** the **purported employees have a “primarily educational**, not economic, **relationship** with their university.” See id. at 487–88 (“The Board’s longstanding rule [is] that it will not assert jurisdiction over relationships that are ‘primarily education’ . . . .”). If so, they are not NLRA employees regardless of the common law. See id. at 488–91; The Leland Stanford Junior Univ., 214 NLRB 621, 623 (1974). In Brown, the Board found persuasive evidence that a “primarily student” relationship existed between the university and its graduate student assistants and concluded that the NLRA did not apply. Brown at 488–91 (emphasizing “the status of graduate student assistants as students, the role of graduate student assistantships in graduate education, the graduate student assistants’ relationship with the faculty, and the financial support they receive to attend Brown”). **Like** the **graduate student assistants** in Brown, **scholarship student-athletes are primarily students. As in Brown and Stanford, the prerequisite to participation is enrollment as a student**. E.g., 342 NLRB at 488 (“We emphasize the simple, undisputed fact that all the petitioned-for individuals are students and must first be enrolled at Brown to be awarded a TA, RA, or proctorship.”). Further, as explained above, participation in intercollegiate athletics is an “‘integral part’” of the “‘educational program.’” Id. at 489 (citation omitted). And, importantly, **scholarship student-athletes must achieve satisfactory academic progress** before they may participate in sports, and eligibility is thus inextricably intertwined with a school’s academic requirements. This fact undercuts the importance the Regional Director placed on whether an institution awards academic credit for athletic participation. The question is not whether the institution awards such credit, but whether academic eligibility may become a subject of collective bargaining; and if scholarship student athletes were deemed employees, there is no principled basis to assume it would not. As the Board concluded in Brown, bargaining would become entangled with a school’s academic standards, and the same academic freedom concerns cited in Brown and Stanford would arise.

Scholarships aren’t the same as payment to employees

**ACE 14** writes[[36]](#footnote-36)

There is another important reason that scholarship student-athletes are primarily students. Like the scholarships in Brown and Stanford, and **unlike payment to employees,** athletic **scholarships are not dependent on the nature** or intrinsic value **of** any **services** allegedly **performed by**, or the skill or function of, **the recipient. Athletic scholarships are calibrated to** the **cost of attendance** so as **to enable students to obtain an education**, see 342 NLRB at 487, **and the student receives a fixed amount regardless of value added to the team**. This calculation method further underscores that scholarship student-athletes are “primarily students”—indeed, **they are fully students—**and therefore **not** statutory **employees** under Brown.8

## Limits Weighing

### Limits Good – Participation

Large limits destroy debate, which is the largest impact to any form of fairness or education

**Rowland 84** writes[[37]](#footnote-37)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called “NDT” programs, are diminishing in scope and size.4 This **decline in policy debate is tied,** many in the work group believe, **to** excessively **broad topics**. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the **breadth of the topics has all but destroyed novice debate**. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. **They are unable to cope** with the breadth of the topic and experience “negophobia,”7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: “Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament.”8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that **broad topics** also **discourage experienced debaters from continued participation** in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that “broad topics discourage participation because of insufficient time to do requisite research.”10 The final effect may be that entire **programs** either **cease functioning** or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: “It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate.”11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

This also **outweighs** any discursive benefit to athletics affs since if people can’t participate in debate, they can’t have the discussions they say are key to social change.

### Limits Good – Creativity

Limits are an intellectual necessity and are key to creativity.

**Intrator 10** writes[[38]](#footnote-38)

**One** of the most pernicious **myth**s about creativity, one that seriously inhibits creative thinking and innovation, **is** the belief **that one needs to “think outside the box**.” As someone who has worked for decades as a professional creative, **nothing could be further from the truth**. This a is view shared by the vast majority of creatives, expressed famously by the modernist designer Charles Eames when he wrote, “**Design depends** largely up**on constraints**.” The myth of **thinking outside the box stems from a fundamental misconception of** what **creativity** is, and what it’s not. In the popular imagination, creativity is something weird and wacky. The creative process is magical, or divinely inspired. But, in fact, **creativity is** not about divine inspiration or magic. It’s about **problem-solving, and** by definition **a problem is a constraint**, a limit, a box. One of the best illustrations of this is the work of **photographers**. They **create by excluding the** great **mass what’s before them, choosing a small frame** in which to work. Within that tiny frame, literally a box, they uncover relationships and establish priorities. What makes creative problem-solving uniquely challenging is that you, as the creator, are the one defining the problem. You’re the one choosing the frame. And you alone determine what’s an effective solution. This can be quite demanding, both intellectually and emotionally. **Intellectually, you are required to establish limits**, set priorities, and cull patterns and relationships **from a great deal of material**, much of it fragmentary. More often than not, this is the material you generated during brainstorming sessions. At the end of these sessions, you’re usually left with a big mess of ideas, half-ideas, vague notions, and the like. Now, chances are you’ve had a great time making your mess. You might have gone off-site, enjoyed a “brainstorming camp,” played a number of warm-up games. You feel artistic and empowered. But to be truly creative, you have to clean up your mess, organizing those fragments into something real, something useful, something that actually works. That’s the hard part. It takes a lot of energy, time, and willpower to make sense of the mess you’ve just generated. It also can be emotionally difficult. **You’ll need to throw out many ideas you** originally **thought were great**, ideas you’ve become attached to, **because they** simply **don’t fit into the rules** you’re creating as you build your box.

Limits increase creativity. They provide space for specific clash creating new possibilities. **Armstrong 2k** writes[[39]](#footnote-39)

The contradictory combination of restriction and openness in how play deploys power is evident in Iser’s analysis of “regulatory” and “aleatory” rules. Even the **regulatory rules**, which set down the conditions participants submit to in order to play a game, “permit a certain range of combinations while also establishing a code of possible play. . . . Since these rules **limit the** text **game without producing it, they are regulatory but not prescriptive**. They do no more than set the aleatory in motion, and the aleatory rule differs from the regulatory in that it has no code of its own” (FI 273). **Submitting to** the discipline of regulatory **restrictions is** both constraining and **enabling because it makes possible certain kinds of interaction** that the rules cannot completely predict or prescribe in advance. Hence the existence of aleatory rules that are not codiﬁed as part of the game itself but are the variable customs, procedures, and practices for playing it. Expert facility with aleatory rules marks the difference, for example, between someone who just knows the rules of a game and another who really knows how to play it. Aleatory rules are more ﬂexible and openended and more susceptible to variation than regulatory rules, but they too are characterized by a contradictory combination of constraint and possibility, limitation and unpredictability, discipline and spontaneity. As a **rule-governed** but open-ended activity, **play provides a model for deploying power in a nonrepressive manner that makes creativity** and innovation **possible not in spite of** disciplinary **constraints but because of them**. Not all power is playful, of course, and some restrictions are more coercive than enabling. But thinking about the power of constraints on the model of rules governing play helps to explain the paradox that restrictions can be productive rather than merely repressive. **Seeing constraints** as structures for establishing a play-space and **as guides for practices** of exchange within it envisions power not necessarily and always as a force to be resisted in the interests of freedom; it **allows imagining** the potential for power to become **a constructive social energy that can animate** games of to-and-fro **exchange between participants** **whose possibilities for self-discovery and** self-**expansion are enhanced by the limits shaping their interactions.**

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